

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DUSA PHARMACEUTICALS, INC.,
a New Jersey corporation; and
QUEEN'S UNIVERSITY AT
KINGSTON, a Canadian academic
organization,

Plaintiffs,

v.

NEW ENGLAND COMPOUNDING
PHARMACY, INC., a Massachusetts
corporation,

Defendant.

Civil Action No. 04-12703-NMG

[JURY TRIAL DEMANDED]

**DUSA PHARMACEUTICALS, INC. AND
QUEEN'S UNIVERSITY AT KINGSTON'S REPLY**

Plaintiffs DUSA Pharmaceuticals, Inc. ("DUSA") and Queen's University at Kingston ("Plaintiffs"), by its undersigned counsel, hereby reply to the Counterclaim filed by New England Compounding Pharmacy Inc. ("Defendant"), in accordance with its headings and numbered paragraphs, as follows:

COUNTERCLAIMS

Parties

1. Admitted.
2. Admitted.

Jurisdiction and Venue

3. Admitted.
4. Admitted.

DUSA's Activities

5. Admitted.

6. Denied.

7. Admitted that on January 31, 2005, DUSA issued a press release announcing a suit against the Cosmetic Pharmacy of Tucson, Arizona for violations of U.S. patent laws and the Lanham Act for false advertising and trademark infringement and referencing this suit against Defendant. Denied as to the remainder of the allegations set forth in paragraph 7.

8. Denied.

9. Denied.

10. Denied.

Tortious Interference With Advantageous Business Relationship

11. Plaintiffs repeat and incorporate their responses to paragraphs 1-10 as if set forth fully herein.

12. Plaintiffs cannot understand the "beneficial business relationships" alluded to, and therefore are without knowledge or information sufficient to admit or deny the allegations in paragraph 12.

13. Plaintiffs cannot understand the "beneficial business relationships" alluded to, and therefore are without knowledge or information sufficient to admit or deny the allegations in paragraph 13.

14. Denied.

15. Denied.

Violation of Mass. G.L. Chapter 93A, §11

16. Plaintiffs repeat and incorporate their responses to paragraphs 1-15 as if set forth fully herein.

17. Admitted.

18. Denied.

19. Denied.

20. Denied.

Lanham Act § 43(a)

21. Plaintiffs repeat and incorporate their responses to paragraphs 1-20 as if set forth fully herein.

22. Denied.

23. Denied.

24. Denied.

Defamation

25. Plaintiffs repeat and incorporate their responses to paragraphs 1-24 as if set forth fully herein.

26. Denied.

27. Denied.

28. Denied.

Injurious Falsehood

29. Plaintiffs repeat and incorporate their responses to paragraphs 1-28 as if set forth fully herein.

30. Denied.

31. Denied.

32. Denied.

WHEREFORE, Plaintiffs respectfully pray that this Court deny the Counterclaim.

Respectfully submitted,

DUSA PHARMACEUTICALS, INC. and
QUEEN'S UNIVERSITY AT KINGSTON

By their attorneys,

/s/ Mona M. Patel

Mona M. Patel, Esq. (BBO #641007)
HOLLAND & KNIGHT LLP
10 St. James Street
Boston, MA 02116
(617) 523-2700 (phone)
(617) 523-6850 (fax)

William J. McNichol, Jr., Esq. (*pro hac vice*)
Maryellen Feehery, Esq. (*pro hac vice*)
Reed Smith LLP
2500 One Liberty Place
1650 Market Street
Philadelphia, PA 19103
(215) 851-8100 (phone)

Dated: April 4, 2005

CERTIFICATE OF SERVICE

I, Mona M. Patel, hereby certify that on this 4th day of April 2005, I caused a copy of DUSA Pharmaceuticals, Inc. and Queen's University at Kingston's Reply to be served, by first-class mail, postage prepaid, and by electronic filing, upon counsel of record for the defendant, Daniel M. Rabinowitz, Menard, Murphy & Walsh, 60 State Street, Boston, MA 02109.

/s/ Mona M. Patel